

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 02/23/05 Item:

File Number
CP04-038

Application Type
Conditional Use Permit

Council District
5

Planning Area
Alum Rock

Assessor's Parcel Number(s)
599-39-095

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Suparna Saha

Location: Southwest corner of McKee Road and Vista Avenue

Gross Acreage: 0.36

Net Acreage: 0.36

Net Density: n/a

Existing Zoning: CN Commercial
Neighborhood

Existing Use: Vacant Gasoline Service Station

Proposed Zoning: No change

Proposed Use: Conversion of former gas station for sale of tires, batteries and minor auto repair uses on a 0.36 acre site.

GENERAL PLAN

Completed by: SS

Land Use/Transportation Diagram Designation
General Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: SS

North: Neighborhood/Community Commercial

A(PD) Planned Development

East: Medium Low Density Residential (8.0 DU/AC)

Unincorporated (County)

South: Medium Low Density Residential (8.0 DU/AC)

Unincorporated (County)

West:: General Commercial

Unincorporated (County)

ENVIRONMENTAL STATUS

Completed by: SS

☐ Environmental Impact Report adopted
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: SS

Annexation Title: McKee No. 11

Date: November 11, 1957

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

CONTACT

Brian Ho
3513 Meadowlands Lane
San Jose, CA 95135

APPLICANT/OWNER

Henry Ho
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APPLICANT/OWNER

Be Thi Ho
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San Jose, CA 95135

PUBLIC AGENCY COMMENTS RECEIVED

Memorandum Attached

Completed by: SS

Fire Department

Memorandum Attached

Other Departments and Agencies

None.

GENERAL CORRESPONDENCE

None.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant is requesting a Conditional Use Permit to allow for the conversion of a former 1,840 square-foot service station building for the sale of tires, batteries and minor auto repair. The site is located at the southwest corner of McKee Road and Vista Avenue (3490 McKee Road) and is in the CN Commercial Neighborhood Zoning District. Pursuant to San Jose Municipal Code Section 20.80.600 and 20.40.100 a Conditional Use Permit is required for a conversion of a gasoline station to another use, and is also required for the sale of tire, batteries and minor auto repair in the CN Zoning District. Major auto repair, such as engine overhaul, machine shop, or auto body paint and repair is not permitted under the Zoning Code.

The 0.36 acre subject site currently contains a vacant 1,840 square-foot service station building. Although not currently occupied, the site is fenced, gated and well maintained. Staff understands that the service station use was discontinued in the early 1990's. A technical report submitted with this application indicates that underground testing shows there is no groundwater or soil contamination at the service station site. After the service station ceased to operate, the applicant has indicated a fruit and vegetable stand operated on the site until approximately the year 2000.

The site is adjacent to existing single-family residential neighborhoods consisting of single-story and two-story homes to the east and south, and commercial to the west. Across McKee Road to the north is a commercial shopping center, which includes a grocery store, drugstore, many smaller shops and a fast food restaurant.

On February 9, 2004, a General Plan Amendment (File No. GP03-05-06) was approved by the City Council to change the Land Use/Transportation Diagram designation from Medium Low Density Residential (8.0 DU/AC) to General Commercial on the subject 0.36 acre site to allow for a new commercial use on the former gas station site.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project involves the leasing of a portion of the site for a minor alteration to allow auto related uses involving negligible or no expansion of use.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of General Commercial. This land use designation is typified by both strip commercial areas along major streets as well as freestanding commercial establishments. Uses that have both commercial and industrial characteristics such as automobile lubrication, self-service, warehousing and other similar uses may be permitted provided that they are found to be compatible with the surrounding neighborhood.

ANALYSIS

The primary issues associated with this project are compatibility with the adjacent residential and conformance to the Commercial Design Guidelines and Zoning Ordinance.

Residential Compatibility

The proposed project will be designed and operated to be compatible with the adjacent residential uses. A 10-foot wide landscaped strip with trees is proposed along the south, east and west along the residential property lines. A 7-foot high masonry wall will be constructed along the southern property line. Along the western property line, low concrete and wrought iron fence exists and a 10-foot tree border will run along the property line. The street frontage along McKee Road has been greatly enhanced with raised planters and trees. The landscaping of the site design will greatly enhance the overall aesthetics of the converted site.

Commercial Design Guidelines and Zoning Ordinance.

The proposed operation of the business for tire and battery sales and minor auto repair will use the existing building on site, and most work will occur within the building. The business hours are proposed to be 8 a.m. to 7 p.m., well within the usual hours for commercial activity. The project will provide for a new 7- to 10-foot wide landscaped strip along McKee Road and Vista Avenue. Although less than the minimum of 15' for the front and 12.5' for the side of this corner lot that would be required for any new commercial development in the CN Zoning District, it is a significant improvement from the existing conditions on-site with enhanced landscaping along all property lines. The applicant will also be installing new lower profile 4-foot low-pressure sodium light standards directed onto the pedestrian area. A 7-foot high masonry wall is proposed to be erected along the single-family lot to the south to provide screening and improve sound attenuation. The existing building and canopy will be repaired and repainted.

The proposed trash bin located along western property line will be completely enclosed with a concrete

masonry enclosure and a 6-foot high wooden lattice will be planted with vines on the side of the enclosure to further enhance the enclosure's visual appearance.

Driveway Closure

The site was originally developed with three driveways, two on McKee Road frontage and one on Vista Avenue. One of the two driveways on McKee Road will be closed to accommodate more perimeter landscaping and to improve public safety by decreasing potential automobile and pedestrian conflicts (see attached site plan).

Site Zoning Code Compliance

This Conditional Use Permit generally meets all of the requirements as set forth in the Zoning Code for a gasoline service station conversion to commercial use, sale of tire, batteries and minor auto repair. The proposed Permit will bring the site, as an integrated whole, into compliance with the Zoning Code, and provides significant site enhancements to improve the interface of this new commercial use with the surrounding neighborhood.

PUBLIC OUTREACH

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to answer questions on the project from the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution:

Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CN Commercial Neighborhood Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. The site is currently occupied by an abandoned gasoline service station.
5. The former gasoline service station is proposed to be converted for the sale of tires, batteries and minor auto repair services.
6. The project proposes a new 216 square foot trash enclosure within a masonry enclosure.

7. The proposed project provides an upgrade to the existing site improvements, rehabilitating the building, and adding significant new landscaping.
8. The Zoning Ordinance requires a Conditional Use Permit in the CN zoning district to allow the sale of tire, batteries, and minor auto repairs.
9. Pursuant to Municipal Code Section 20.80.600 a Conditional Use Permit is required for the conversion of a Gasoline Service Station to another use.
10. Surrounding land uses include a neighborhood shopping center to the north, residential uses to the south, east, and west, and the proposed use, as conditioned, is compatible with these existing uses.
11. The project proposes the closure of the eastern most driveway on McKee Road.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram designation and relevant urban design policies.
2. The proposed project is in compliance with the overall intent of the Commercial Design Guidelines.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project will be compatible to and harmonious with the adjacent residential use.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "McKee Auto Care", dated January 24, 2005 on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Hours of Operation.** This facility shall be limited to operate between the hours of 8 a.m. to 7 p.m.
5. **Landscaping.** Planting and irrigation are to be provided as indicated, on the final Approved Plan

Set. Landscaped areas shall be maintained and watered and all dead plant material is to be replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San Jose Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San Jose Landscape and Irrigation Guidelines.

6. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property.
7. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
8. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
9. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
10. **Colors and Materials.** All structure colors and materials are to be those specified on the approved plan set.
11. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San Jose Municipal Code requires that all land development approvals and applications for such approvals in the City of San Jose shall provide notice to the applicant for a recipient of such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San Jose Santa Clara Water Pollution Control Plant represented by approved land uses in the area served said the Plant will cause the total sewage treatment demand to meet or exceed the capacity the capacity of San Jose Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
12. **Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions.
 - a. **Sewage Fees.** Accordance with City Ordinance al storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
13. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief of Building Official:
 - a. **Construction Plans.** This permit file number, CP 04-038, shall be printed on all construction plans submitted to the Building Division.

14. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
15. **Fire Hydrants.** All existing and new fire hydrants shall be at least 10 feet from all driveways.
16. **Street Numbering.** Street numbering shall be visible day and night from the nearest street, either by means of illumination or by use of reflective materials.
17. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San Jose Municipal Code on the site must be used and stored within approved building and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San Jose Fire Prevention Bureau.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. The Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

cc: Henry Ho, 3513 Meadowlands Lane, San Jose, CA 95135

Attachments
Building Division (2)